decided ratings advantage for VHF stations. Specifically, in 29 of the 33 television markets where a UHF network affiliate competes against VHF network affiliates, the UHF station is the _lowest_ rated.[14]

The Commission itself has recognized the inherent UHF handicap. For example, the Commission created a UHF Comparability Task Force to investigate the UHF handicap, and that Task Force concluded that VHF channels are likely always to remain superior to UHF for television broadcast due to fundamental laws of physics over which the Commission has no control. _See_ _Improvements To UHF Television Reception_, 90 FCC 2d 1121, 1124 (1982). _See_ _generally_, _Central Alabama Broadcasters, Inc_., 88 FCC 2d 1501, 1518-1520 (Rev. Bd. 1982). Moreover, to calculate the national audience reach for purposes of determining compliance with the Commission's National Multiple Ownership Rule applicable to television (Section 73.3555(e)(1) of the Commission's Rules), UHF television stations are attributed with only 50 percent of the television households in their television market, as compared with a 100 percent attribution factor for VHF stations. _See_ Section 73.3555(e)(3)(i) of the Commission's Rules. Similarly, under Section 1.1153 of the Commission's Rules, UHF television stations in any given market uniformly pay a lower annual regulatory fee to the Commission than VHF

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14 _See_ Exhibit 4, _infra_.

televisions in that market. In television markets 11 - 25[15], VHF television stations pay an annual regulatory fee of $16,000, while UHF stations pay an annual regulatory fee of only $12,800.

The UHF handicap is recognized by the national television networks. As the Commission is aware, the Fox Television Network recently switched affiliates in a number of television markets, dropping UHF affiliates in favor of VHF stations. Cleveland was such a market. WOIO(TV) had been the Fox affiliate in that market, and, as a result of the loss of the Fox affiliation, WOIO(TV) became a CBS Television Network affiliate. The Cleveland station which had formerly been the CBS affiliate in the market (WJW-TV, a VHF station) replaced WOIO(TV) as the Cleveland affiliate of the Fox Television Network.

Yet, notwithstanding these affiliation switches in the Cleveland market, according to a study recently commissioned by Malrite and conducted by National Economic Research Associates, Inc. ("NERA"), WOIO(TV) has not been able to capture the same share of viewers as did WJW-TV for the same CBS Television Network programming, and, as a result, WOIO(TV) does not and cannot charge the same spot advertising rates during such

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[15] The Cleveland market is ranked as the thirteenth largest market in the United States.

programming as did WJW-TV.[16] Stated otherwise, compared with WJW-TV while it was a CBS affiliate, WOIO(TV) will remain at a competitive disadvantage in relation to the other two VHF network affiliates in the Cleveland market (i.e., WEWS-TV and WKYC-TV). Similarly, Television Station WUAB(TV), a UHF independent station, is now at a relatively greater competitive disadvantage versus the now Fox-affiliated Television Station WJW-TV -- a VHF station -- than it had been in comparison with WOIO(TV) as a Fox affiliate.[17]

In this connection, several matters are noteworthy. First, as a CBS Television Network affiliate, WOIO(TV) today has less local spot inventory to sell to advertisers than when the station was an affiliate of the Fox Television Network, since Fox furnishes far fewer hours of programming to its affiliates than does CBS, and, consequently, network spots are broadcast during a far greater number of hours per week on WOIO(TV) as a CBS affiliate than as a Fox affiliate. This fact of life necessarily

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16 A copy of the NERA Study is annexed hereto as Exhibit 5. It should be noted that the NERA Study was commissioned by Malrite to provide economic data in response to an inquiry by the U.S. Department of Justice in connection with its scrutiny of Malrite's Cleveland LMA with Television Station WUAB(TV), in the context of review under the Hart-Scott-Rodino Antitrust Improvement Act. As noted below, based on its review of the NERA Study and of other data supplied by Malrite, the Department of Justice concluded that implementation of the WUAB(TV) LMA would not harm competition in the Cleveland market.

17 NERA Study, Exhibit 5, infra, at 18.

impacts on the station's profitability. By the same token, the former CBS affiliate in the Cleveland market (WJW-TV) now has a greater volume of local spot inventory to sell to advertisers, as a Fox affiliate than it did as a CBS affiliate, since the station is carrying fewer hours of network programming as a Fox affiliate than it did as a CBS affiliate. Furthermore, in relation to local spot sales, UHF television stations are able to sell frequency of contact with audience, as well as the reach of the station's signal; conversely, UHF stations are generally able to sell frequency of contact with the audience, but not the reach of the audience, as compared with their VHF competitors. These factors collectively place UHF stations at a further competitive disadvantage.

Significantly, virtually all of the advertisers and advertising agencies that NERA interviewed provided information consistent with this conclusion. Id. at 18. While most opined that the UHF disadvantage was reduced as the result of increased cable penetration[18], they also believed that WOIO(TV), as the new CBS affiliate in the Cleveland market, would have to prove that it can garner the same audience as did VHF Station WJW-TV as

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18 It should be noted that any amelioration of the effect of the UHF handicap that might be achieved by cable carriage of the signal of a UHF television station is offset by the fact that the station's target audience is fractionalized to a greater degree on cable than over-the-air, as the result of a greater number of programming choices delivered to consumers via cable.

a CBS affiliate before they are willing to pay advertising rates for a given program equivalent to those commanded by WJW-TV as a CBS affiliate. Id. Furthermore, prior to its loss of the Fox Television Network affiliation, WOIO(TV) was unable to obtain the same advertising rates for its upcoming broadcasts of NFL football as did WJW-TV when it became the Fox affiliate in the market. Most of the advertisers contacted by NERA believed that they could vigorously and successfully negotiate lower advertising rates for broadcasts on WOIO(TV), solely as a result of the affiliation switch, as compared with the rates charged by WJW-TV for the same CBS Television Network programming. Id.

C. Liberalization Of The Television Duopoly Rule Will Not Harm Competition In Television Local Markets

In connection with the foregoing, it should be noted that broadcast television stations compete, as suppliers of advertising time, for the patronage of local, regional and national advertisers. Advertising time may be sold as individual 30-second or 60-second commercial spots, or in blocks (e.g., for infomercials, sporting or political events, etc.). Potential advertisers are interested in reaching an audience with particular demographics; to the extend that the viewers of a station's programming match those desired demographics, the advertisers will at least consider purchasing advertising time from the station in question.

According to the NERA Study recently commissioned by Malrite[19], advertising media, whether broadcast or print, create a product -- an audience -- which is marketed, through the sale of advertising time or space, to advertisers. NERA Study at 5. Stated otherwise, news, information and entertainment are a television station's "factor inputs"; the audience attained by the station is the product produced with those inputs; and advertisers are the ultimate consumers. Id. In this respect, according to NERA, the various media are no different from other firms which assemble factor-inputs to create a product that is sold to ultimate customers. Id.

The advertising rates charged, for example, for a television station depend upon the characteristics of the audience that it attracts -- e.g., audience size, age and income. Indeed, the rates ultimately charged by a television station depend, among other things, on the following factors, according to NERA:

1. The relative bargaining power of the station in question versus that of the advertiser;

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19 Exhibit 5, infra. Malrite commissioned NERA to prepare an economic analysis of the relevant advertising market within which to assess the likely competitive effects of the proposed time brokerage agreement between WOIO(TV) and WUAB(TV). As will be noted from that document, the study was predicated on the conservative assumption, contrary to fact, that Malrite had proposed outright acquisition of WUAB(TV), rather than merely a time brokerage arrangement on the station.

2. The quality of the station's programming vis-a-vis that available in similarly situated time slots garnering an audience with similar demographics;

3. The extent to which the station's programming is expected to reach the prospective audience -- e.g., whether delivered by cable television versus over-the-air television broadcast signals and taking into consideration both the audience share and the quality of the advertising medium received or purchased; and

4. The availability of alternative advertising media.

Id.

According to the NERA Study, in addressing the question of competitive suitability of various media, what truly matters in media markets is competition at the margin. Id. at 6. This may be defined both in terms of the number of advertisers that switch to other media and the proportion of their advertising budgets that is moved to media other than television in response to relative price changes. According to NERA, the question is not whether advertisers' entire budgets are moved away from, say, broadcast television in response to relative price increase. id. If, for example, the proportion of advertisers' budgets that would shift to radio is sufficient to constrain the competitive behavior of the broadcast television stations competing for their business, then radio advertising must be included within the relevant market.

According to the NERA Study, the manner in which local spot advertising rates are determined substantially reduces the likelihood of anticompetitive conduct among commonly owned television stations in the same market. According to NERA, rates for any given local advertising spot are determined in vigorous bilateral negotiations between individual television stations and both existing and prospective advertisers. The agreed-upon negotiated rate will depend upon a number of factors, including the availability of alternatives and the relative bargaining power of the parties. These rate negotiations are often conducted over the telephone. The NERA Study found that this method of setting spot advertising rates is highly disaggregated, and that advertisers have the ability to quickly turn to, at a minimum, the other television stations within the DMA. Id. at 19. Indeed, the mere threat of turning to other stations may be sufficient, in some instances, to constrain a station's competitive behavior. Id. These factors substantially reduce, if not eliminate entirely, the ability of any single station or group of stations to impose non-competitive terms and conditions of sale on their advertisers. Id.

NERA emphasizes virtually all of the advertisers or advertising agencies that it interviewed provided information consistent with the conclusion that the television marketplace is vigorously competitive and that advertisers routinely play one station against another in negotiating for better advertising rates. Id. According to NERA, virtually none of the advertisers or advertising agencies in question believed that a combination of two commonly-owned UHF television stations in the Cleveland market would reduce that advertiser's or agency's ability to use the other available television stations in the market to its advantage in rate negotiations. Id.

Based on its analyses, the NERA Study concludes that there are cross-elasticities of demand among different media. More specifically, NERA concludes that there exists a relevant product market for local advertising messages encompassing all media -- both electronic media (e.g., radio broadcast, cable television, satellite-delivered, television, etc.) and non-electronic media (e.g., direct mail, newspapers, magazines, billboards, etc.). According to the NERA Study, even assuming a hypothetical "advertising market" encompassing only local spot advertising available for broadcast television (i.e., excluding cable television), the nature of competition would operate so as to prevent the exercise of market power by any station or group of stations. Indeed, since prices for television advertising are individually negotiated, without either the guidance or predictability afforded by any rate cards, the likelihood of successful coordination of anti-competitive pricing by any television licensee owning two television stations in the same market remains remote at best. Id.

Larger advertisers -- for whom television advertising tends to be relatively important -- have the ability to play stations against one another to gain competitive terms of sale.

Relatively smaller advertisers are less likely to consider local broadcast television spot announcements as critical in their advertising plans. Based on the NERA Study, they are more likely to consider other alternative media (e.g., radio, cable television, newspapers, direct mail, weekly newspapers, etc.) as effective substitutes. Id. This ability to move to other media when economic conditions warrant also provides an effective constraint against anti-competitive conduct.

In this connection, the NERA Study concludes that the ability by cable television to compete for advertising with traditional broadcast television licensees continues to grow in size and importance with stronger cable programming. NERA concludes that cable television systems will be able to use their large and growing subscriber base to fund advertising business and exploit markets via local and regional cable "interconnects". Id. NERA concludes further that the anticipated future growth of the new media (e.g., DBS, satellite, low power television stations, wireless cable, video dialtone, and computerized information services (e.g., Prodigy, America On Line, etc.)) will likely increase further the competition for advertisers' business. Id.

It is clear that, given the realities that: (a) television broadcasters must compete in a robust diverse environment of multi-channel program suppliers, and (b) television licensees have very little ability to exert anti-competitive pressure on advertising rates, there is no longer any rational basis for the Commission to continue to prohibit common ownership of interests in more than one television station in a market, when each single multi-channel program supplier (e.g., cable television, DBS, wireless cable, video dialtone platforms, etc.) is capable of supplying literally hundreds of channels of diverse information to the same audience to which the television broadcaster directs its programming. This is particularly the case in light of the fact that broadcast television is now competing for advertising dollars, as well as a share of audience, with operators of such multi-channel delivery systems.[20]

D. Liberalization Of The Television Duopoly Rule Will Promote Greater Viability For Television Stations, In Light Of Economies Of Scale

The threat to the continued viability of television broadcasting, and to the unique public service programming that television stations provide to the public on a no-charge basis, can be eliminated if the Commission were to permit market-based solutions to this threat through liberalization of the duopoly rules, as proposed herein by Malrite. If television broadcasters

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20 For example, cable television operators now derive revenues from at least two distinct revenue streams: (a) subscription fees paid by consumers (including a basic monthly charge, per channel program charges, and per-program charges for pay-per-view programming), and (b) revenues from the sale of spot advertising inserts in and adjacent to cable programming.

are allowed to realize economies of scale by creating television duopolies in a single market, particularly where such duopolies involve a UHF station, they will be better able to compete in the multichannel marketplace, and thereby continue to fulfill their public service obligations in the public interest. The Commission recognized these market realities when it liberalized the radio duopoly rule in 1992 "to allow the radio industry to adapt to the information marketplace of the 1990s, free of the artificial constraints that prevent valuable efficiencies from being realized. Revision of Radio Rules And Policies, 7 FCC Rcd 2755, 2760 (1992), on reconsideration, 7 FCC Rcd 6387 (1992), on further reconsideration, 9 FCC Rcd 7183 (1994).

Liberalization of the television duopoly rule will permit a natural market-based solution that television licensees can utilize to remain competitive. The cost to a licensee of operating a second television station in the same market is necessarily significantly less than the cost of running the same station on a stand-alone basis. Allowing one entity to own more than one broadcast television station within a local market may permit the company to realize economies of scale, reducing the costs of operating the two stations. The Commission has recognized in its proceedings relaxing the radio duopoly rule and in establishing the "one-to-a-market" waiver standard, that joint ownership of broadcast stations in the same market permits cost-sharing in administrative and overhead expenses, sharing of personnel, joint advertising sales, and the pooling of resources for local program production (such as news and public affairs programming). See Revision Of Radio Rules And Policies, supra, 7 FCC Rcd at 2774; Amendment of Section 73.3555 of the Commission's Rules, 4 FCC Rcd 1723, 1746-48 (1989), on reconsideration, 4 FCC Rcd 6489 (1989). The cost savings from these economies of scale could then be used to provide better programming to the public, as well as to continue to subsidize the creation of public service programming which is usually presented on a sustaining basis. Set forth below, in the discussion concerning the Commission's proposals relating to LMAs, is information regarding Malrite's experience in the Cleveland, Ohio, market involving the magnitude of such economies of scale.

E. Liberalization Of The Television Duopoly Rule Will Foster Diversity

The liberalization of the Commission's television duopoly rule as proposed herein by Malrite would serve the public interest because television duopolies may actually serve to foster, rather than adversely affect diversity of viewpoints. This point is best illustrated by analogy from Malrite's experience under its LMA with Television Station WUAB(TV), Lorain, Ohio. As noted above, Malrite operates UHF Television Station WOIO(TV), Shaker Heights, Ohio, and provides programming as a time broker to WUAB(TV). As a result of the time brokerage relationship between these two UHF television stations, Cleveland area television viewers now benefit from increased local programming on both stations and the addition of another news outlet in the market. Utilizing economies of scale, as described below, Malrite was able to invest millions of dollars into initiating this new local news service, which employs over 100 news and production people and produces several morning news broadcasts and three major evening newscasts.

Most importantly, the resulting increase in locally-produced programming has enabled Malrite to further its commitment to reflecting the diversity of the community through its local broadcast operations in the Cleveland market. Thus, as the Call And Post -- a newspaper serving Ohio's African-American community -- noted in an editorial:

> "Last week Channel 19 News, embarked on a new venture that should be recognized by our community. Due in part to the efforts of Dennis Thatcher, Vice President and General Manager of WOIO ..., Clevelanders have been given an unprecedented opportunity to enjoy diversity, both in front of and behind the camera, with the advent of the Channel 19 and Channel 43 news combination. In front of the camera, Channel 19 anchor Emmett Miller joins co-anchor Denise Dufala at 6:00 and 11:00 p.m., complementing the already successful tandem of Romona Robinson and Jack Marschall on the Channel 43 news at 10:00 p.m.[21] In the mornings, Maria Winfeld, also a new addition, brings Clevelanders morning news updates. Channel 19's diversification has also taken place behind the camera, with several key appointments, like those of respected news veteran George Yarbrough as News Assignment Manager, and Allyson Hunter as

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[21] In addition to these four news anchors for newscasts Monday - Friday, two additional news anchors (Gretchen Carlson and Dave Barker) are employed to staff the weekend newscasts of both WUAB(TV) and WOIO(TV).

> Producer.[22] It is important that those who make such marked efforts to diversify their organizations receive recognition and support from the Black community. If their efforts go largely unnoticed, others will be less likely to follow suit."[23]

Pooling of resources in connection with the programming for WOIO(TV) and WUAB(TV) has afforded the stations the opportunity of providing new and diverse programming that reflects the local community and its concerns.

F. Recommendation With Respect To Television Duopolies

For the reasons set forth above, the Commission should modify the television duopoly rule to permit common ownership of attributable interests in two UHF television stations in the same market. UHF television stations continue to suffer a competitive disadvantage vis-a-vis VHF television stations, and some now find themselves unable to remain viable in today's evolving multi-channel marketplace. UHF-UHF duopolies will create economies of scale that UHF stations need to remain financially viable and to

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22 Both Mr. Yarbrough and Ms. Hunter, as well a Romona Robinson and Maria Winfeld, are minority group members. Annexed hereto as Exhibit 6 is a reprint of an article which appeared in the April/May 1995 issue of Kaleidoscope Magazine (a minority-oriented publication in Cleveland) which provides information on both Mr. Yarbrough and Ms. Hunter and which highlights the fact that the WOIO(TV)/WUAB(TV) LMA has resulted in significant minority hiring in the market.

23 For convenience, a copy of the Call And Post editorial is annexed hereto as Exhibit 8.

continue to provide public service programming (e.g., news, public affairs, childrens programming, etc.). In addition, the Commission should modify the television duopoly rule to permit common ownership of attributable interests in one UHF television station and one VHF station in the same market on a case-by-case basis, if the applicant can demonstrate that such a UHF - VHF duopoly will not adversely affect competition. Such liberalization of the duopoly rule to allow for VHF-UHF television combinations upon an appropriate showing of no adverse effect would allow a traditionally weaker UHF station the possibility of combining with a stronger VHF station, thereby enabling the weaker one to have access to greater financial resources to assure high quality service to the public.

Furthermore, the Commission should permit common ownership of attributable interests of two VHF television stations in the same market on a case-by-case basis, if the applicant can demonstrate that such a VHF-VHF duopoly will not adversely affect competition.[24]

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24 In addition, but not as an alternative to the foregoing, the Commission should relax the present television duopoly rule by decreasing its prohibited contour overlap from Grade B overlap to Grade A overlap. A Grade A contour standard provides a substantially more realistic and accurate measure of a station's core market than the existing Grade B contour rule. The conversion from a Grade B overlap standard to a Grade A standard will increase broadcasters' long-term viability by enabling them to reap the benefits provided by economies of scale described above, without any corresponding loss in program diversity. Indeed, the savings allowed by streamlining management, marketing and (continued...)

V. The Commission's Rules and Policies Should Not Artificially Restrict Television LMAs

A. Background

An LMA is in essence a type of joint venture that generally involves the sale by a licensee of discrete blocks of time to a time broker, who then supplies the programming to fill that time and sells the commercial spot announcements to support it. Such time brokerage agreements enable separately-owned stations to function cooperatively via joint advertising, shared technical facilities, and joint programming arrangements.

Information available to Malrite indicates that, at present, there are at least 51 television LMAs in existence (based on March 1995 data). Specifics as to these LMAs are set forth in Exhibit 8 hereto. In addition, it is Malrite's understanding that there are numerous other television LMAs presently in existence or in planning stages. As will be noted from the data in that Exhibit, a number of the existing TV LMAs involved financially distressed stations, others facilitated a network affiliation switch, yet others involved start-up facilities, and in at least one instance the LMA facilitated the operations of a minority-controlled television station. In addition, LMAs may be used as precursors to the sale of television stations pending the

[24] (...continued)
station administration will actually increase broadcasters' ability to provide program diversity, variety and quality.

acquisition of financing and Commission approval of the assignment application.

B. <u>The Continuation Of Existing Television LMAs Will Not Harm Competition Or Diversity Within The Markets Of The Stations In Question</u>

As shown by the data reflected in Exhibit 9, existing LMA arrangements have helped to stimulate competition by (a) contributing to the start-up of new television stations, and (b) rescuing some financially-distressed stations (almost always UHF stations) from being forced to cease operations. In addition, existing LMAs have fostered increased diversity in local markets by adding community-oriented public service programming to the local market. Thus, the continuation of these existing LMAs on a "grandfathered" basis, regardless of any changes in the television duopoly rule, will not harm competition or diversity within the markets within which these stations operate. Diversity is also fostered by television LMAs by virtue of the fact that each distinct licensee which is a party to the LMA retains its own non-delegable duty to comply with all of its public interest obligations and public service programming obligations.

Malrite's experience with its LMA involving its time brokerage of significant portions of the broadcast week on Television Station WUAB(TV) in the Cleveland market provides an outstanding illustration of how television LMAs can enhance competitiveness and diversity in a local market.[25]

As noted above, Malrite's UHF Television Station WOIO(TV) in the Cleveland market last year lost its Fox Television Network affiliation to a VHF television station in the market; as a consequence, WOIO(TV) became a CBS Television Network affiliate. At the same time, UHF Television Station WUAB(TV), Lorain, Ohio, an independent station, was facing several market pressures from declining audience shares. By entering into an LMA, the two stations not only managed to survive but also increased the quantity and quality of their respective local and non-local informational and entertainment programming. WOIO(TV) invested millions of dollars in initiating a new local news service which now employs over 100 news and production people and produces several morning news broadcasts and three major evening newscasts. Both WOIO(TV) and WUAB(TV) now do a better job of programming for the needs and interests of the residents of the Cleveland area and have substantially increased the number of hours of locally-produced programming that each station broadcasts.

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25 It should be noted, in this regard, with respect to the effect of an LMA on competition, the U.S. Department of Justice scrutinized Malrite's Cleveland LMA with WUAB(TV), in the context of review under the Hart-Scott-Rodino Antitrust Improvements Act, and concluded that implementation of the LMA would not harm competition in the Cleveland market.

Thus, competition was actually enhanced as a result of the WOIO(TV)/WUAB(TV) LMA, because two stations that otherwise would have been less able to compete effectively in the market were, on a combined basis, better able to sustain operations and provide better and increased public service programming, and this improvement in local programming has fostered a greater diversity of voices in the Cleveland market. Importantly, the LMA has provided declining independent UHF Station WUAB(TV) with a needed source of additional revenue with which to sustain its viability and on-air operations.

In this regard, it should be noted that, before WOIO(TV) lost its Fox Television Network affiliation last year, WUAB(TV) had been the only Cleveland station to broadcast a local evening newscast between the hours of 10:00 - 11:00 p.m. WUAB(TV) had been the only station broadcasting a 10:00 p.m. local newscast in Cleveland since January 1988. Following the Fox affiliation switch from WOIO(TV) to WJW-TV, the latter station moved its highly rated 11:00 p.m. local newscast to the 10:00 p.m. time slot. The advent of a second 10:00 p.m. local newscast in the Cleveland market from VHF Station WJW-TV resulted in a 50 percent erosion of WUAB(TV)'s audience for its 10 p.m. local newscast among adults age 18-49 and a 25-54, and a 66 percent erosion of its audience among adults age 18-34. <u>See</u> Exhibit 9, <u>infra</u>. Notwithstanding this fact, and in order to maintain alternate news choice for viewers in the Cleveland market, Malrite, through the WUAB(TV) LMA, made commitments of hundreds of thousands of dollars in newsgathering equipment, resources and talent to expand the WUAB(TV) news effort and to jointly create three first-class news programs at 6:00 p.m., 10:00 p.m. and 11:00 p.m. on WUAB(TV) and WOIO(TV).[26] It is noteworthy that the UHF disadvantage for WOIO(TV) and WUAB(TV) remains a permanent hindrance to potential ratings growth. Even with the WUAB(TV) LMA, ratings have not grown for either station; indeed, ratings have fallen for each of the stations since the commencement of the LMA. See Exhibit 10. The UHF disadvantage in the Cleveland market is further illustrated by the fact that there have been significant ratings losses experienced by WOIO(TV) for its local nightly 6:00 p.m. and 11:00 p.m. newscasts and for the highly-respected "CBS Evening News" since the switch of the CBS Television Network affiliation in Cleveland from VHF Television Station WJW-TV to UHF Station WOIO(TV) in September 1994. See Exhibit 11, infra.

The WOIO(TV)/WUAB(TV) LMA has resulted in significant efficiencies and economies of scale, including combination of portions of the programming staffs of the two stations, elimination of duplicate jobs, the ability to utilize the core of the WUAB(TV) News Department, as significantly augmented by

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26 It should also be noted that, following the commencement of the WUAB(TV) LMA, WOIO(TV) and WUAB(TV) continue to target different audiences and different advertisers. See Exhibit 12, infra.

substantial staff and facilities enhancements, on both WUAB(TV) and WOIO(TV) to create an additional news voice in the community, to enable these weaker UHF stations to attempt to provide a competitive alternative to the well-entrenched and highly-rated news broadcasts of the Cleveland VHF television stations and to the combination and consolidation of the staffs into common studio facilities, and the ability of both stations to utilize a common set of program libraries.[27]

By combining the respective staffs used to provide programming on both WUAB(TV) and WOIO(TV), the licensees of both stations have been able to eliminate approximately 15 full-time and three part-time positions by consolidating certain job responsibilities and functions, while at the same time dramatically increasing the staffing and resources devoted to

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27 As required under the Commission's main studio rule, Television Station WUAB(TV) continues to maintain its main studio within the WUAB(TV) City-Grade Contour, and the licensee of WUAB(TV) continues to maintain a meaningful management and staff presence at its main studio, in the form of at least one full-time management-level employee and at least one additional full-time employee. Indeed, WUAB(TV) employs, at its main studio, a total of 8 full-time employees and one part-time employee, including the following: Station Manager, Chief Engineer, Transmitter Supervisor (Engineer), Operations Engineer, Maintenance Engineer, Videographer, Public Affairs Director, Public Service Coordinator, and one part-time Accountant. Thus, WUAB(TV) is far exceeding the minimum management and staff persons at the station's main studio than is required under the Commission's main studio rule. Furthermore, consistent with Commission policy dealing with radio LMAs, the licensee of WUAB(TV) continues to maintain complete control over all of the programming broadcast on the station, including control over station personnel, programming and finances.

news and public service programming. In calculating an estimate of the dollar value of this efficiency, Malrite has assessed the reduction, not only in salary and wages, but also in employee benefit costs, vacation and sick time, and other related costs. In addition, the LMA has resulted in economies of scale through the shared use of property and plant, insurance savings, shared telephone line expenses. Malrite's estimate of the annual savings of this efficiency of operation is approximately $1.7 million. This is a cost reduction that would not have been possible absent the LMA. The estimated cost incurred in achieving this efficiency, comprised of severance pay and outplacement services to terminated employees, was approximately $850,000.

In another efficiency which has resulted from the WOIO(TV)/WUAB(TV) LMA is Malrite's ability to utilize the existing WUAB(TV) News Department to create another news voice in the market through broadcasts on WOIO(TV). The existing news infrastructure of WUAB(TV) is being retained. Thus, WOIO(TV) and WUAB(TV) have common use of cameramen, editors, directors, switchers, as well as news vehicles, tape recorders, weather forecasting equipment, satellite links, etc. Additional news staff hired include the following highly skilled full-time professionals:[28]

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[28] In addition to these already-hired full-time professionals, a number of additional professional positions remain to be (continued...)

4 Anchors
3 Directors
3 Producers
3 Editors
4 Videographers
4 Reporters
2 Writers
2 Researchers
3 Assignment Editors
2 Weather Reporters (Meteorologists)
2 Sports Writers
<u>6 News Production Assistants</u>

38 Total additional news employees

Of these 38 additional news employees who have already been hired, 18 are women, and 6 of the 18 women are minority group members. Four of the 38 new full-time news employees are males who are members of minority groups. All of these 38 additional full-time employees are in the so-called "upper-four" job categories of FCC form 395-B. As a result of this additional staffing, the combined news staffs of WUAB(TV) and WOIO(TV) consists of a total of 73 full-time and four part-time news employees.[29] As a result, the LMA has brought to the Cleveland market its first locally-owned and operated news service which

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[28] (...continued)
filled in the next few months.

[29] By comparison, prior to the commencement of the WUAB(TV) LMA in August 1994, WUAB(TV) had a total of only 35 full-time and 10 part-time employees. Of these 10 former part-time employees of WUAB(TV), six have been promoted to full-time status following commencement of the WUAB(TV) LMA; the remaining four individuals who had been part-time employees of WUAB(TV) prior to the LMA continue to remain part-time staff. Annexed hereto as Exhibit 13 is a reprint of a supplement to <u>Cleveland Magazine</u> entitled "Channel 19 Ten Years After" describe the efforts by WOIO(TV) to survive and to present valuable, first-class public service programming to the residents of the Cleveland market.

provides more local news to the market from a single source than from any other television station in the market. In adding this news service to WOIO(TV), Malrite anticipates an annual operating cost of an additional $1,800,000. However, in the absence of the WOIO(TV)/WUAB(TV) LMA, in the event that WOIO(TV) were to attempt to provide the level and quality of local news programming presently possible under the LMA, Malrite's annual operating costs would be in the $3.2 million, and capital expenditures would be approximately $3 million to establish a new, stand-alone local newscast in the Cleveland market.

As noted above, an additional efficiency resulting from the LMA is consolidation of the two stations into one physical plant -- a building in downtown Cleveland. It was the desire of both WOIO(TV) and WUAB(TV) to bring the stations into the heart of downtown, thereby providing the stations with a more viable presence in the market and making the stations more accessible to local events, government offices, etc. The Department of Economic Development for the City of Cleveland, in conjunction with the Office of the Mayor of the City, strongly encouraged the relocation into the "Playhouse/Gateway Area". A revitalization of the area is underway, and the stations' presence in the central area of downtown Cleveland will help accelerate interest by other businesses in possibly moving into the area.